

What Records May Be Used

The determination of responsible individuals will be based upon research and investigation of:

- ◆ Tax Commission internal records, including filed returns;
- ◆ Department of Commerce files, including UCC filings;
- ◆ documents prepared by the business entity;
- ◆ other legal documents;
- ◆ bank records;
- ◆ corporate meeting minutes;
- ◆ testimony of the business entity;
- ◆ testimony of witnesses;
- ◆ Internal Revenue Service documents; or,
- ◆ Employment Security information.

Tax Commission Responsibility

Pursuant to its statutory obligations, the Tax Commission will make every effort to ensure that trust fund taxes are protected, responsible individuals are assessed, and amounts due are collected in the most fair, responsible, and efficient manner possible.

If you need an accommodation under the Americans with Disabilities Act, contact the Tax Commission at (801) 297-3811 or TDD, Telecommunications Device for the Deaf, (801) 297-3819. Please allow three working days for a response.

For additional information, you may access the Tax Commission's World Wide Web Home Page at: <http://www.tax.ex.state.ut.us>



Utah State Tax Commission

Personal Liability

**For Unpaid Sales, Fuel,
and Withholding Taxes**

Pub. 40
Rev. 6/96

Collections Division
210 North 1950 West
Salt Lake City, UT 84134
(801)297-6300
(800)662-4335

Introduction

The purpose of this pamphlet is to advise individuals with control of the finances of a corporation, LLC, LLP, partnership, or other entity, that they may be held personally liable for that entity's failure to collect or remit certain "trust fund" taxes.

Trust fund taxes are monies that the entity is required to collect or withhold on behalf of the State of Utah. The following taxes are trust fund taxes:

- ◆ state and local sales and use tax;
- ◆ transient room tax;
- ◆ resort communities tax;
- ◆ public transit tax;
- ◆ tourism, recreation, cultural, and convention facilities tax;
- ◆ motor fuel, clean fuel, special fuel, and aviation fuel tax; and
- ◆ withholding tax.

Personal Liability

Utah Code Ann. Section 59-1-302 provides that if an entity that is required to collect trust fund taxes fails to collect or remit those taxes, the Tax Commission shall assess a penalty equal to 100 percent of the unpaid trust fund taxes on any responsible individual within the entity. Assessment of the penalty may result in the filing of a lien for delinquent taxes which carries the same force as a court judgment and may be executed against real and personal property of the responsible individual.

Who is Responsible

A responsible individual is one who had the duty or the power to direct the collection, accounting, or remittance of trust fund taxes to the Tax Commission at the time the delinquency occurred. A responsible individual may be:

- ◆ an officer, director, or shareholder of a corporation;
- ◆ another corporation or partnership;
- ◆ a partner in a partnership;
- ◆ a lender;
- ◆ an employee of a corporation, partnership, or proprietorship;
- ◆ a court-appointed trustee;
- ◆ any other person who had significant control over the finances of a business or who determined which creditors would be paid.

How to Determine Responsibility

In reaching the determination that an individual is a responsible individual the Tax Commission will ascertain who had the duty, responsibility, and authority to:

- ◆ sign checks;
- ◆ hire and fire employees;
- ◆ sign tax returns;
- ◆ sign or authorize payroll;
- ◆ control corporate voting stock, either totally or partially; or,
- ◆ determine which creditors get paid.

*Items listed in this pamphlet are examples only.
Other evidence may also be considered.*